

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO:**

Grap Equipment, Inc.

For concrete discharge into unnamed tributary
to Lake Monticello in Palmyra, Virginia

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and 8(d) between the State Water Control Board and Grap Equipment, Inc. (Grap) to resolve certain violations of the State Water Control Law and regulations at an unnamed tributary to Lake Monticello near a house construction site in Palmyra, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Water Control Board, a permanent citizen’s board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. “Code” means the Code of Virginia (1950), as amended.
3. “Grap” means Grap Equipment, Inc., a Virginia corporation certified to do business in

Virginia and its affiliates, partners, subsidiaries, and parents.

4. “VRO” or “Regional Office” means the Valley Regional Office of the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
5. “Director” means the Director of the Department of Environmental Quality.
6. “Order” means this document, also known as a Consent Special Order.
7. “DEQ” means the Virginia Department of Environmental Quality.

SECTION C: Findings of Fact and Conclusions of Law

1. On February 11, 2003, VRO staff investigated a salamander kill in an unnamed tributary to Lake Monticello in Palmyra, Virginia, which occurred on February 9, 2003. A neighbor at 31 Zephyr Road had notified VRO of the salamander kill.
2. A small stream flows through a wooded ravine, bordered closely by houses along Zephyr Road. During the course of VRO’s investigation, it was discovered that concrete had been discharged to the stream as a result of clean-up operations following the pouring of concrete by Grap to reinforce the basement wing walls of a nearby home on Zephyr Road in Palmyra. Freshly poured concrete was found in and around a culvert in the stream behind this nearby home. DEQ determined that the concrete washed out into the stream and caused a sharp increase in the water’s pH which killed the salamanders.
3. Virginia Code § 62.1-44.5A(3) prohibits discharges of wastes which alter the physical, chemical, or biological properties of state waters to the detriment of aquatic life.
4. Virginia Administrative Code section 9 VAC 25-31-50(A) similarly prohibits such discharges into state waters.
5. Virginia Code § 62.1-44.5B and 9 VAC 25-31-50(B) also require that such discharges be reported to DEQ.
6. Grap was issued a Notice of Violation (NOV) on April 30, 2003 citing the violations described in paragraphs 3 and 4 above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Grap and Grap agrees:

- To pay a Civil Charge of \$3,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order; and

The payment must be made by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Grap shall also include its Federal Identification Number with each payment and shall note on the payments that they are being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Grap, for good cause shown by Grap, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Grap admits the jurisdictional allegations in the Order.
4. Grap consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Grap declares it has received fair and due process under the Virginia Administrative

Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Grap to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Grap shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Grap must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Grap shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Grap intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and

assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Grap. Notwithstanding the foregoing, Grap agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Grap petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Grap has satisfied all the requirements of the Order is a Acase decision within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to Grap.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Grap from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Grap voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Grap:

Date: _____ By: _____

Title: _____

Commonwealth of Virginia, City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by

_____, who is _____ of Grap, on behalf of the Corporation.
(name) (title)

Date my commission
expires

Notary Public